

Significant Issues

The Public Defender Department (PDD) references State v. Ball, in which the NM Court of Appeals held that the language of the current statute is unconstitutionally vague. The court interpreted the language “when the amount of the check, draft or order, or the total amount of the checks, drafts or orders...,” to mean that a separate punishment shall be imposed for each worthless check issued. PDD notes that if the Legislature amends the dollar amount in the statute without clarifying the aforementioned language, the court may presume that the Legislature intended each check to result in a separate conviction. If, as a matter of policy, the Legislature intends that offenders be punished separately for the issuance of each worthless check, the statutory language requires clarification to that end. (SEE TECHNICAL ISSUES)

FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) notes that the bill may prompt a slight shift in costs from district courts to magistrate and metropolitan courts.

The Corrections Department (CD) anticipates a small decrease in recurring costs and revenues, as fewer offenders are likely to be incarcerated or to pay parole and probation supervision fees and fines.

TECHNICAL ISSUES

PDD suggests the following amendments:

If the Legislature intends that in cases involving multiple checks, drafts or orders, offenders be punished for a **single offense** and the punishment be based on the total amount of those checks, PDD recommends the following changes:

A. When ~~[the amount of the check, draft or order, or]~~ the total amount of the checks, drafts or orders, ~~[are]~~ is for more than one dollar (\$ 1.00) but less than ~~[twenty five dollars (\$ 25.00),]~~ two hundred and fifty dollars, the person shall be sentenced to imprisonment in the county jail for a term of not more than thirty [30] days or a fine of not more than one hundred dollars (\$100), or both such imprisonment and fine.

B. When ~~[the amount of the check, draft or order, or]~~ the total amount of the checks, drafts or orders, ~~[are]~~ is for more than ~~[twenty five dollars (\$ 25.00),]~~ two hundred and fifty dollars, the person shall be sentenced to imprisonment in the penitentiary for a term of not less than one [1] year nor more than three [3] years or the payment of a fine of not more than one thousand dollars (\$ 1,000) or both such imprisonment and fine.

If the Legislature intends that offenders be punished for **multiple offenses**, PDD recommends language similar to that recently added to the embezzlement statute: “Each separate incident of embezzlement or conversion constitutes a separate and distinct offense.” NMSA 1978, § 30-16-8 (2002).

The Attorney General (AG) references State v. Muzio, in which the NM Court of Appeals held that because the minimum sentence imposed for issuing worthless checks is less than that stated for a fourth degree felony under § 31-18-15 (A) and (D)(3), i.e., a conviction under § 30-36-5

constitutes a felony, but not a fourth degree felony. The court reasoned as follows: § 30-1-6 states that a crime is a felony if it is so designated by law, or if upon conviction thereof a sentence of death or of imprisonment for a term of one year or more is authorized. §30-36-5 authorizes a term of imprisonment of one year or more and is therefore a felony; however, § 30-1-7 states that a crime declared to be a felony, without specification of degree, is a felony of the fourth degree. § 30-36-5 does not “declare” the offense of issuing a worthless check or checks over \$250 to be a felony, so it is not a fourth degree felony.

The AG recommends an amendment clarifying that issuing bad checks, drafts or orders for which the total amount exceeds \$250 is a felony. This could be done by inserting “the offense shall be a felony, and ” in paragraph B before the phrase, “a person shall be sentenced to.”

JCF/njw